

## DISCRIMINATION BY HEALTH FACILITIES

### **Health & Safety Code §1316**--State law requires:

- "The rules of a health facility shall include provisions for use of the facility by, and staff privileges for, duly licensed podiatrists within the scope of their respective licensure . . . ."
- "Such rules and regulations shall not discriminate on the basis of whether the staff member holds a M.D., D.O., or D.P.M. degree, within the scope of their respective licensure."
- "Each health facility shall establish a staff comprised of physicians and surgeons, podiatrists, or any combination thereof, which shall regulate the admission, conduct suspension, or termination of the staff appointment of the podiatrists while using the facilities."
- "With regard to the practice of podiatry in health facilities throughout this state, medical staff status shall include and provide for the right to pursue and practice full clinical and surgical privileges for holders of M.D., D.O., and D.P.M. degrees within the scope of their respective licensure. Such rights and privileges shall be limited or restricted only upon the basis of an individual practitioner's demonstrated competence. Such competence shall be determined by health facility rules, regulations, and procedures which are necessary and are applied in good faith, equally and in a nondiscriminatory manner, to all practitioners regardless of whether they hold a M.D., D.O., or D.P.M. degree."
- "Nothing in this section shall be construed to require a health facility to offer a specific health service . . . . If a health service is offered, the facility shall not discriminate between persons holding M.D., D.O., or D.P.M. degrees who are authorized by law to perform such services."
- "The rules of a health facility which include provisions for use of the facility by, and staff privileges for, medical staff shall not discriminate on the basis of whether the staff member holds a M.D., D.O., or D.P.M. degree, within the scope of their respective licensure. The health facility staff processing, reviewing, evaluating, and determining qualifications for staff privileges for medical staff shall include, if possible, staff members that hold M.D., D.O., D.P.M. degrees."
- "Any violation by a health facility of . . . this section may be enjoined in an action brought in the name of the people of the State of California by the district attorney of the county in which the health facility is located, upon receipt of a complaint by an aggrieved physician and surgeon or podiatrist."

### **Department of Health Service Regulations**--§70701 of the State Code of Regulations (Licensing and Certification of Health Facilities) specifies:

- "Each hospital shall have an organized medical staff . . . ."
- "The medical staff shall be composed of physicians and, where dental or podiatric services are provided, dentists or podiatrists."

- "The medical staff . . . shall adopt written by-laws which provide formal procedures for the evaluation of staff applications and credentials, appointments, reappointments, assignment of clinical privileges, appeals mechanisms . . . . The medical staff shall abide by and establish a means of enforcement of its by-laws."
- Medical staff by-laws, rules and regulations shall not deny or restrict within the scope of their licensure, the voting right of staff members or assign staff members to any special class or category of staff membership, based upon whether such staff members hold an M.D., D.O., D.P.M, or D.D.S. degree or clinical psychology license.

### **How DHS Enforces the Law**

As part of its enforcement arsenal, the [State Department of Health Services \(DHS\)](#) is authorized under §1278 to "enter and inspect any building or premises at any reasonable time to secure compliance with, or to prevent a violation . . . ." §1279 requires DHS to make periodic inspections of health facilities. General acute care facilities must be inspected at least once every three years or "as often as necessary to insure the quality of care being provided."

§1294 authorizes DHS to suspend or revoke the license of any health facility.

§1290 provides that any person who violates the law is guilty of a misdemeanor.

§1293 requires the District Attorney (DA), upon the DHS's request, to prosecute any violation.

To summarize, DHS may take disciplinary action against the facility under §1294 or request that a criminal complaint be filed by the District Attorney (DA) under §1293. DHS may also ask the DA to obtain an injunction against the health facility to prohibit continued or future violations of §1316.

### **For a complete list of DHS Licensing & Certification offices, visit:**

**<http://www.dhs.ca.gov/lnc/org/default.htm>**

Discrimination is unethical and illegal. Let the California Podiatric Medical Association and your State legislator know if you encounter unreasonable delays in obtaining compliance with the law by health facilities.